IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 2915 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANGABHAI ABHERAJBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 2915 of 1995

MR JM PANCHAL for Petitioner No. 1

MS NV JOSHI, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 21/04/2003

ORAL JUDGEMENT

The present revision application has been filed

by the petitioner - convict - original accused, in Criminal Case No. 68 of 1993 before the learned Judicial Magistrate First Class, Dehgam in Ahmedabad Rural District. He was convicted by the said court on 12/06/95, for an offence punishable under Section 379 of the Indian Electricity Act, 1910. The said court directed the present petitioner to suffer imprisonment for one year and to pay fine of Rs.2500/- and in default of payment of fine, he was directed to undergo further SI for four months.

2. The petitioner herein, preferred Criminal Appeal No. 24 of 1995 before the Sessions Court at Ahmedabad (Rural) unsuccessfully. Hence, this revision.

3. The facts of the case of the prosecution against the petitioner may be briefly stated as follows;

That the petitioner's father was a consumer of the Gujarat Electricity Board and had obtained electricity connection. His Consumer No. was AG136 at Village Vasna Choudhary in Dehgam Taluka. The father of the petitioner did not pay the amount of electricity bill and therefore, his electricity connection was disconnected. Thereafter, the Deputy Engineer of Vasna Choudhary Village had taken a visit to the place of the petitioner and there it was noticed that the petitioner had arranged to reconnect the disconnected wires and started consuming electricity supply illegally. Therefore, FIR was filed. It was investigated and chargesheet was filed. Charge at Ex.5 was framed against the petitioner for an offence punishable under Section 379 IPC. The petitioner pleaded not guilty to the said charge. Therefore, evidence was recorded. After the conclusion of evidence, further statement of the petitioner was recorded and after hearing the learned advocate for the petitioner on the quantum of punishment, the petitioner was convicted and sentenced as aforesaid.

4. Feeling aggrieved by the said judgment and conviction order, the petitioner preferred the aforesaid Criminal Appeal before the Sessions Court Ahmedabad (Rural), unsuccessfully.

5. The petitioner has contended in this revision application that the charge framed against the petitioner, did not include the charge for an offence punishable under Section 39 of the Indian Electricity Act. It has also been contended that the Deputy Engineer of the Gujarat Electricity Board was not competent and authorized, to file complaint or FIR against the

petitioner. That, therefore, there is a patent illegality on the face of the record of the trial court. That, therefore, the trial court was not justified in convicting the petitioner and the Sessions Court was not justified in upholding the said conviction. That, therefore, the judgments and orders of the two courts below are illegal and deserve to be set aside. The petitioner has, therefore, prayed that the present revision application be allowed, the conviction and sentence against the petitioner recorded by the two courts below, may be set aside and the petitioner may be acquitted outright.

6. On receiving the revision application, it was admitted and pursuant to the service of notice of Rule, Ms.NV Joshi learned APP has appeared and argued on behalf of the State. I have heard Mr.JM Panchal learned advocate for the petitioner and Ms.NV Joshi learned APP for the State. They have taken me through the evidence on record and through the relevant portions of the judgment of the two courts below.

7. Mr.JM Panchal learned advocate for the petitioner has initially argued that the FIR was not filed by a competent officer, but, it was filed by the Dy. Engineer of the G.E.B.. That, therefore, the FIR was incompetent and the further proceeding including investigation, submission of chargesheet, the conviction and sentence order etc. are all illegal. He has, therefore, initially argued that the entire proceedings including the conviction of the petitioner are required to be quashed and set aside on the aforesaid technical ground alone. However, Ms.N V Joshi, learned APP has argued that there is a subsequent amendment in the provisions of the Indian Electricity Act and therefore, the aforesaid argument would not stand. On going through the said amendment, Mr.Panchal, learned advocate for the petitioner has agreed to the said argument of learned APP, Ms.NV Joshi. Therefore, the said argument is not required to be considered by this Court.

8. However, Mr.JM Panchal learned advocate for the petitioner has argued at length and with vehemence on the point that the charge against the petitioner was restricted to an offence punishable under Section 379 of IPC and that the offence punishable under Section 39 of the Indian Electricity Act was not included. This would mean, that a charge for an offence punishable under Section 39 of the Indian Electricity Act was not framed against the petitioner and therefore, the petitioner ought not to have been convicted by the trial court for

the said offence, in absence of charge for the said offence against the petitioner. It is, therefore, contended by Mr.Panchal that the conviction imposed by the trial court on the petitioner for an offence punishable under Section 39 of the Indian Electricity Act cannot be sustained and consequently, the judgment of the trial court as well as of the appellate court, both are required to be set aside on this technical ground.

9. There is no dispute about the fact. For this purpose, we can refer to the records of the trial court. We can also look at the charge framed against the present petitioner at Ex.5. There, it has been mentioned that though the electricity connection in question was permanently disconnected, the petitioner reconnected the said disconnected wire, without any permission and committed theft in respect of the electric supply, dishonestly and committed an offence punishable under Section 379 of IPC. Charge was framed on 21/07/93. This shows that there was no charge for an offence punishable under Section 39 of the Indian Electricity Act. There is no serious dispute about the same also.

10. The chargesheet against the petitioner was also looked at and column 5 of the said chargesheet, simply refers to the offence punishable under Section 379 of the IPC.

11. Similar is the position with respect to the FIR. Here also the reference has been made to the offence punishable under Section 379 of the IPC only. Therefore, it cannot be disputed that the petitioner was chargesheeted by the I.O. and was charged by the trial court for an offence punishable under Section 379 of IPC. It has also to be accepted that no charge for an offence punishable under Section 39 of the Indian Electricity Act was framed against the present petitioner.

12. In this respect, we can refer to a decision of Satya Narain Prasad Vs. Bhagwan Ramdas And Ors. reported in 1995 Supplement (4) SCC, 629. In Para 3 of the said judgment the provision contained in Section 39 of the Indian Electricity Act, 1910 has been referred which may be reproduced for ready reference as follows;

"Theft of Energy - Whoever dishonestly abstracts, consumes or uses any energy shall be deemed to have committed theft within the meaning of the Indian Penal Code, 1860 (45 of 1860) and the existence of artificial means for such abstraction shall be prima facie evidence of such dishonest abstraction."

13. Now, if we go through the evidence on record, it

is absolutely clear that the father of the petitioner was a consumer and since he did not pay the electricity bills, his connection was disconnected and thereafter, the petitioner restored the electricity connection without any permission from the G.E.B.. The prosecution has examined concerned officers of the G.E.B. in order to prove the said fact. The said evidence is supported by the panchnama on the spot, which goes to show that electric connection was illegally reconnected and restored and the electric supply was illegally drawn by the petitioner, at the relevant point of time.

14. The trial court, as well as the appellate court, have concurrently recorded a finding of fact that the petitioner had taken illegal electric connection and was using electric supply, illegally. This being a finding of fact recorded concurrently by the two courts below, it would not be open to this Court to interfere with the said finding of fact. It is more so, when the said finding of fact is based on evidence on record. Therefore, this aspect was not seriously disputed during the course of his argument by Mr.J M Panchal learned advocate for the petitioner.

15. His argument solely rests on the aforesaid technicality. It is true that no specific charge for an offence punishable under Section 39 of the Indian Electricity Act was framed against the petitioner. However, in my opinion, it is not a serious illegality which would vitiate the trial. If we compare the provisions made in Section 379 of IPC and the provisions made in Section 39 of the Indian Electricity Act, we find that, to dishonestly abstract, consume or use energy, is an offence punishable under Section 39 of the Indian Electricity Act, which is deemed to be an offence punishable under Section 379 of IPC. Now, if we refer to the provision contained in Section 379 of IPC, we have to look to the definition of "theft" as mentioned in Section 378 thereof. The definition of "theft" in Section 378 IPC reads as under; "Whoever, intending to take dishonestly any movable property out of the possession of any person without his consent moves that property, such taking is said to commit theft".

16. This means that the basic ingredients of Section 378 of IPC are the "dishonest removal of a property without the consent of the person in possession".

17. So, a theft is said to have been committed, if there is a dishonest move or removal of a property without the consent of the person in possession thereof.

Similarly, the offence under Section 39 of the Indian Electricity Act would be committed if the electricity supply is dishonestly abstracted, used or consumed.

18. On comparing the two provisions, it can be gathered that they are almost similar. The "dishonest intention" is a common factor in both of them. For an offence punishable under Section 379 IPC, there must be a removal of a property without the consent of the person in possession. For an offence punishable under Section 39 of the Indian Electricity Act, again there is an act under which the power supply has been dishonestly abstracted, used or consumed. This shows that the ingredients are similar.

19. The charge specifically shows that the present petitioner had dishonestly stolen the electricity supply, by reconnecting the disconnected wires. Even, in the statement under Section 313 of the Code, the petitioner was questioned on the point that he had taken electric supply as aforesaid. A specific question was also put that the petitioner had committed theft of electric supply. Looking to the above position, I am of the opinion that the petitioner had sufficient notice and knowledge as to what he was required to face. He faced the trial court with the said notice and knowledge and therefore, no prejudice has been caused to the defence of the petitioner by including Section 39 of the Indian Electricity Act, to the charge under Section 379 IPC framed against him. In other words, simply because the charge for an offence punishable under Section 39 of the Act was not mentioned while framing the charge for an offence punishable under Section 379 of IPC against the petitioner, it cannot be said that the proceeding would stand vitiated and prejudice has been caused to the petitioner. It is more so when an offence punishable under Section 379 of the said Act is deemed to be an offence punishable under Section 379 IPC.

20. In this connection we can refer to a decision in AIR 1956 SC, 116, wherein it has been laid down that ommission to frame charge would not be fatal, if no prejudice is caused to the petitioner. However, if prejudice has been caused to the petitioner, the proceeding would stand vitiated.

21. In my opinion and in my reading of Section 39 of the said Act and Section 378-379 IPC, the basic ingredients of these provisions are so closely inter-connected - inter-related, that they almost overlap one another. One can read the basic ingredients of

Section 39 of the Act in Section 378-379 IPC and vice versa. Therefore, simply because it has not been mentioned in the charge that it also amounted to an offence punishable under Section 39 of the said Act, it cannot be said that prejudice has been caused to the petitioner. I am of the view, that looking to the nature of the offence said to have been committed by the petitioner, no prejudice is caused to the petitioner and therefore, the petitioner would not be entitled to the said technical benefit. I am also of the view that proceedings do not stand vitiated simply because the charge for an offence punishable under Section 39 of the Indian Electricity Act was not included when the petitioner was charged for an offence punishable under Section 379 of IPC. No other point has been canvassed on merit.

22. An attempt was made to show from Satya Narain Prasad Vs. Bhagwan Ramdas (Supra) that when the offence was committed long back and when the revision is being decided after a long span of time, the petitioner may not be required to suffer jail sentence. Now, it is required to be considered that the said case of Satya Narain Prasad (Supra) related to an application filed before the High Court under Section 482 of the Cr.P.C for quashing the FIR. The High Court quashed the proceeding, but the Hon'ble the Supreme Court found that it was not legal to quash the FIR. However, the Hon'ble the Supreme Court observed in Para 4 of the judgment that the offence in the case is said to have been committed in the year 1981 and having regard to the nature of the offence and the long delay, we do not think that it is just and necessary to allow the prosecution to go on. With this observation the appeal was disposed of. In the present case, the facts are different. The petitioner was convicted by the trial court. The conviction was confirmed by the Sessions Court. Thereafter, the petitioner has come with this revision application. It is true, that more than seven years have gone after the submission of revision application. However, simply because the Court is sometimes not able to take up the appeals and revisions against the convicts very soon, it would not be appropriate for this Court to take a lenient view in all such cases. Even considering the lenient view adopted by the two courts below, there is no further scope for taking a further lenient view.

23. Ultimately, it is required to be considered that it was within the notice and knowledge of the petitioner that the electric connection was disconnected. He must have taken help of some electrician for the restoration

of electric connection. The period for which he illegaly drew electric supply is also required to be considered. In my view, looking to the manner in which the offence has been committed, it would not justify the stopping of proceeding or the disposal of the revision application, without requiring the petitioner to suffer the punishment. It is more so when cases of illegal abstraction of electricity supply are on increase and are being reported frequently. Such illegal abstraction of electricity supply puts the G.E.B. to a loss and it also places additional financial burden on the bonafide and honest consumers of the Board. Even with a view to have a deterrent effect, the Court has to take a little strict view of the matter. Therefore, there is no justification for taking a lenient view against the petitioner. In above view of the matter. this is not a fit case for interference at this level, while exercising revisional jurisdiction. There is no merit in the revision application and it deserves to be dismissed.

24. For the foregoing reasons, this revision application is ordered to be dismissed. The judgments and conviction orders of the two courts below are confirmed. The petitioner is on bail. His bail bonds are cancelled. The petitioner shall surrender to the custody. The office shall immediately send a copy of this order to the trial court with a view to enable the said court to issue appropriate warrant against the petitioner and intimation to the surety, so that the petitioner can surrender to the custody and serve out the remaining punishment. Rule is discharged.

(D. P. Buch, J.)

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